

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 942 - SB 798**

March 3, 2019

**SUMMARY OF BILL:** Enhances the penalty for the sale, manufacture, distribution and possession with intent of more than 15 grams of any substance containing fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil to a Class B felony and more than 150 grams of any substance containing fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil to a Class A felony. Enhances the penalty of the sale, manufacture, distribution and possession with intent of more than 150 grams of any substance containing any fentanyl derivative or analogue to a Class A felony.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$3,304,500 Incarceration\***

Assumptions:

- Pursuant to Tenn. Code Ann. § 39-17-408(c), fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil are Schedule II controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-406(b)(48), fentanyl derivatives and analogues are Schedule I controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-417(b), the sale, manufacture, distribution, and possession with intent of up to 200 grams of fentanyl derivatives and analogues is a Class B felony.
- Pursuant to Tenn. Code Ann. § 39-17-417(c), the sale, manufacture, distribution, and possession with intent of up to 200 grams of fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil is a Class C felony.
- The proposed legislation will enhance the penalty for the sale, manufacture, distribution, and possession with intent of 15 grams or more of fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil to a Class B felony and enhance the penalty for the offense of 150 or more grams of fentanyl, carfentanyl, remifentanyl, alfentanil, and thiafentanil, or fentanyl derivatives and analogues to a Class A felony.
- Based on information provided by the Department of Correction (DOC), there have been 91 Class B felony admissions for offenses under § 39-17-417(b) each year over the last five years.
- This analysis estimates that five percent, or 4.6 (91 x 5%), admissions each year result from convictions for fentanyl derivatives and analogues.

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- This analysis estimates that 70 percent, or 3.2 admissions ( $4.6 \times 70\%$ ), of fentanyl derivatives and analogues admissions will involve less than 150 grams and remain a Class B felony offense.
- This analysis estimates that 30 percent, or 1.4 ( $4.6 \times 30\%$ ), of current Class B felony fentanyl derivatives and analogues admissions will involve 150 grams and be enhanced to a Class A felony.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- Population growth and recidivism will not impact these admissions.
- The average time served for a Class A felony is 18.67 years. The average time served for a Class B felony is 6.65 years. The proposed legislation will result in each admission serving an additional 12.02 years ( $18.67 - 6.65$ ).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender admitted every year serving an additional 12.02 years (4,390.31 days) for an annualized increase in state incarceration expenditures of \$321,283 ( $\$73.18 \times 4,390.31$ ).
- Based on information provided by DOC, there have been 610.6 Class C felony admissions for offenses under Tenn. Code Ann. § 39-17-417(c) each year over the last five years.
- This analysis estimates the proposed legislation will enhance five percent, or 30.5 ( $610.6 \times 5\%$ ), admissions each year.
- Of the five percent of admissions enhanced, this analysis estimates that 70 percent, or 21.4 ( $30.5 \times 70\%$ ), admissions, will involve 15 grams or more of fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil and be enhanced to a Class B felony.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for two ( $21.4 \times 8.37\%$ ) additional admissions for a total of 23 ( $21.4 + 2$ ).
- The average time served for a Class B felony is 6.65 years. The average time served for a Class C felony is 3.62 years. The proposed legislation will result in each admission serving an additional 3.03 years ( $6.65 - 3.62$ ).
- According to the DOC, 47.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.2 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $23 \text{ offenders} \times 47.2\% = 11 \text{ offenders}$ ).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 12 offenders (23 offenders – 11 recidivism discount) admitted every year serving an additional 3.03 years (1,106.71 days) for an annualized increase in state incarceration expenditures of \$971,868 ( $\$73.18 \times \$1,106.71 \text{ days} \times 12 \text{ offenders}$ ).

- Of the five percent of admissions enhanced, this analysis estimates that 30 percent, or 9.2 (30.5 x 30%) of current Class C felony admissions will involve 150 grams or more of fentanyl, carfentanil, remifentanyl, alfentanil, and thiafentanil and be enhanced to a Class A felony.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for one (9.2 x 8.37%) additional admission for a total of 10 (9.2 + 1).
- The average time served for a Class A felony is 18.67 years. The average time served for a Class C felony is 3.62 years. The proposed legislation will result in each admission serving an additional 15.05 years (18.67 - 3.62).
- According to the DOC, 47.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.2 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (10 offenders x 47.2% = 5 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 5 offenders (10 offenders – 5 recidivism discount) admitted every year serving an additional 15.05 years (5,497.01 days) for an annualized increase in state incarceration expenditures of \$2,011,356 (\$73.18 x 5,497.01 x 5).
- The total recurring increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$3,304,507 (\$321,283 + \$971,868 + \$2,011,356).
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly increase local revenue.
- The proposed legislation will not increase the caseloads of the district attorneys general, the district public defenders, or the courts. Any impact to the courts, district attorneys, and public defenders can be accommodated within existing resources.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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